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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,258	12/09/2003	Gaku Ehara	031294	3331
23850	7590	06/20/2005	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP			TONGUE, LAKIA J	
1725 K STREET, NW				
SUITE 1000			ART UNIT	
WASHINGTON, DC 20006			PAPER NUMBER	
			1645	

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,258

Applicant(s)

EHARA ET AL.

Examiner

Lakia J. Tongue

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's response filed on March 16, 2005 is acknowledged. Claims 1-6 are pending and under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office Action.

Rejections Maintained

The rejection of claims 1-6 under 35 U.S.C 102(a) is maintained for the reasons set forth in the previous Office Action on page 2.

The rejection was on the ground Ebara et al, discloses an invention that relates to the manufacture approach of sporangium containing the spore and the Pallas PORARU body of bacillus POPIRIE that has the prevention effectiveness to the Scarabaeidae insect by cultivating the bacillus belonging to bacillus POPIRIE (Bacillus popilliae, 0011) by the culture medium (0001).

Ebara et al, discloses the above invention which offers glutamic acid and a prevention effectiveness to the Scarabaeidae insect characterized by cultivating the included culture medium for 0.2 to 4.0 mass % and an adsorbent (0009). Ebara et al, further discloses that the rate of glutamic acid to all the amino acid in a culture medium has a desirable mass of 35-90 % (0020). Ebara et al, also discloses the growth of a bacillus and the rate of sporangium-izing, which were excellent in adding a pyruvic acid to a culture medium (0024). The concentration of a pyruvic acid is 0.01 to 0.5 mass % (0025).

Lastly, Ebara et al, discloses an invention that offers the prevention approach of the Scarabaeidae insect, which sprinkles the prevention agent of the Scarabaeidae insect which contain the sporangium containing active principle in the habitation soil of the Scarabaeidae insect (0010).

Applicant urges that a) the cited reference corresponds to Japanese application no. 2002-094765, which was listed on the present declaration as a prior foreign application for which foreign priority is not claimed, b) the inventorship of the present

application and cited document JP '030 are the same even though the inventors listed on the patent do not exactly match the spelling in the declaration of the present application and c) the inventorship of JP '030 is the same as that of the present invention, JP '030 does not represent invention "by another" and JP '030 cannot serve as prior art under 35 U.S.C 102(a).

It is the examiner's position that applicant neglected to claim any form of foreign priority and that failing to claim foreign priority on a declaration does not overcome a 102(a) rejection.

The examiner acknowledges applicant's attempt to rectify the error in the translation of JP '030 by way of a declaration. However, applicant is advised to submit evidence that further proves that the translation error is indeed a translation error. Submitting the original document in addition to a certified translation making obvious the translation error can do this.

Applicant is one of the co-authors of the publication cited against his or her application, the publication may be removed as a reference by the filing of affidavits made out by the other authors establishing that the relevant portions of the publication originated with, or were obtained from, applicant. Such affidavits are called disclaiming affidavits. *Ex parte Hirschler*, 110 USPQ 384 (Bd.App. 1952). **The rejection can also be overcome by submission of a specific declaration by the applicant establishing that the article is describing applicant's own work.** *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

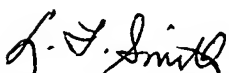
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakia J. Tongue whose telephone number is 571-272-2921. The examiner can normally be reached on Monday-Friday 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1645

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


LJT


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